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09/721,062	11/22/2000	Charles H. Glover	GC-409	2382

7590 07/26/2002
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EXAMINER	
TUDOR, HAROLD JAY	
ART UNIT	PAPER NUMBER
3641	

DATE MAILED: 07/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,062

Applicant(s)

Glover et al

Examiner

Judson, H.J.

Group Art Unit

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/1/02 and 6/12/02
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-38 is/are pending in the application.
- Of the above claim(s) 1-3, 38 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 4-37 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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1. Applicants have elected Group II, claims 4-38. Applicants have further elected Species C. Applicants' attorney, Mr. Sheldon Parker, stated in a telephone interview, on July 18, 2002, that claims 4-38 read on the elected species. Claim 38 does not read on the elected species because the actuator in, Fig. 6, is not planar because it has the stem attached to its rear surface. Claims 4-37 read on the elected species. Claims 1-3 and 38, drawn to the non-elected inventions, have been withdrawn from consideration in accordance with 37 CFR 1.142(b).

2. Applicant's election of Group II and Species C in Papers No. 3 and 5 is acknowledged. Because applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. The disclosure is objected to because of the following informalities: In line 14 of page 16, --frusto-- should be substituted for "frusta". In line 16 of page 18, --.001--should be substituted for ".0001", note claim 37. In line 15 of page 29, --27-- should be substituted for "25". Appropriate correction is required.

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 4-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 4, 7, 15, 21, and 32 are incomplete in that they do not clearly define the size of the particles which is an essential feature of the invention, note line 21 of page 12 through line 2 of page 13. There is no positive antecedent basis for "the impact end of said hull", in line 3 of claim 4, "said radial dispersion control member", in line 6 of claim 4, "said radial dispersion", in lines 1 and 2 of claim 5, "said target", in line 2 of claim 5, "the impact end of said shell", in line 3 of claims 7 and 13, "said target", in line 2 of claims 19 and 20, "said at least one stem member", in line 1 of claim 30, and "the interior side of said truncated conical section of said actuator", in line 3 of claim 31. Claim 6 is vague and indefinite in that it does not clearly state that the stem member is located on a back surface of said actuator. The exact meaning of "substantially cohesive mass", in line 2 of

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claims 8 and 9, is unclear because the particles start separating from each other as soon as they leave the shell. In line 2 of claim 15, --an-- should be substituted for "a", third occurrence". The phrase "the actuator being releasably fixed to the hull and an actuator", in lines 2 and 3 of claim 15, is vague and indefinite. The exact meaning of "a cohesive group of lethal individual particles", in lines 11 and 12 of claim 15, is unclear because the particles start separating from each other as soon as they leave the shell. The exact meaning of "cohesive mass of lethal particles", in line 4 of claim 21, is unclear. Claim 29 is vague and indefinite in that it does not clearly state how the actuator is position in the hull. The clause "maintaining said individual particles as a unitary mass of particles", in line 5 of claim 32, is vague and indefinite in that line 3 of claim 32 states that the projectile is converted to an expanding body upon impact. The phrase "discrete particles non-lethal particles", in line 7 of claim 32, is vague and indefinite. The phrase "preferably", in line 2 of claim 34, is vague and indefinite. The phrase "tearing said hull away from the particles", in line 3 of claim 35, is vague and indefinite in that the hull peels away from the particles. The above are illustrative only.

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6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 21-23, 27, 32, 33, 35 and 36, as far as they can be understood because of their indefiniteness, are rejected under 35

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U.S.C. 102(e) as being anticipated by Davies. Davies discloses, in Figs. 8A-8C, a projectile comprising a shell having a gas seal at its rear end a forward cavity containing a plurality of particles and an actuator 94 at the front end of the cavity in contact with the particles. Davies states that his projectile is lethal over a short distance and then becomes less lethal over distance, note line 61 of col. 2 through line 4 of col. 3. The Davies projectile will perform the claimed method.

9. Claims 21-23, 27, 32, 33, 35 and 36, as far as they can be understood because of their indefiniteness, are rejected under 35 U.S.C. 102(b) as being anticipated by Canon. Canon discloses a projectile comprising a shell 10 containing a plurality of particles and a liquid, and a non-fragmenting tip 20, note line 63 of col. 3 through line 4 of col. 4. The Canon projectile will perform the claimed method.

10. Claims 24-26, 34 and 37, as far as they can be understood because of their indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the characteristics of the elements of

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the Davies projectile to achieve a desired dispersion of the particles.

11. Claims 4, 5 and 7-20, as far as they can be understood rejected under 35 U.S.C. 103(a) as being unpatentable over Davies in view of Peddie. Davies is applied as above. However, Davies does not a wad absorption zone. Peddie teaches that it is old and well known in the art to employ a wad absorption zone in a shotgun projectile to protect the projectile upon firing. To employ an absorption zone in the Davies projectile to protect the projectile during firing, as taught by Peddie, would have been obvious to one having ordinary skill in the art at the time the invention was made.

12. Claim 28, as far as it can be understood because of its indefiniteness, is rejected under 35 U.S.C. 103(a) as being unpatentable over Davies in view of Davis. Davies is applied as above. However, Davies does not disclose the actuator located within a channel of the shell. Davis teaches that it is old and well known in the art to locate a top wad in a channel of a shotgun shell or hull to firmly secure the wad to the shell. To locate the actuator 94 in a channel in the shell of the Davies projectile to firmly secure the actuator to the shell, as taught

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by Davis, would have been obvious to one having ordinary skill in the art at the time the invention was made.

13. Claims 24-26, 34 and 37, as far as they can be understood because of their indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Canon. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the characteristics of the elements of the Canon projectile to achieve a desired dispersion of the particles.

14. Claims 4, 5 and 7-20, as far as they can be understood because of their indefiniteness, are rejected under 35 U.S.C. 103(a) as being unpatentable over Canon in view of either Turco et al or Knoster, Jr.. Canon is applied as above. However, Canon does not disclose a projectile comprising a gas seal and a wad absorption zone. Both Turco et al and Knoster, Jr. teach that it is old and well known in the art to employ a gas seal and a wad absorption zone on the rear portion of a projectile to protect the projectile upon firing. To employ a gas seal and a wad absorption zone on the rear portion of the Canon projectile to protect the projectile, as taught by either Turco et al or

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Knoster Jr., would have been obvious to one having ordinary skill in the art at the time the invention was made.

15. Barbieri is cited as being of interest in that he disclose a device for controlling the dispersion of shot.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold J. Tudor, whose telephone number is (703) 306-4172.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Harold J. Tudor". The signature is fluid and cursive, with the first name "Harold" and last name "Tudor" clearly distinguishable.

HAROLD J. TUDOR
PRIMARY EXAMINER